IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3797 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HASMUKHBHAI B PATEL

Versus

DHARMAPAL C PATEL

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Appearance:

1. Special Civil Application No. 3797 of 1990

MR PC MASTER for Petitioner No. 1

MR JITENDRA M PATEL for Respondent No. 1-2

Shri R. M. Chauhan, AGP for Respondent No. 3

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/09/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Master for the petitioner; Mr. Jitendra M. Patel for respondent Nos.1 and 2 and Mr. R.M.Chauhan, learned AGP for respondent

NO.3. In this petition, rule was issued by this Court on 27th December, 1991 and while issuing the rule, the matter was ordered to be expedited.

Brief facts of the present petition are to the effect that the father of the petitioner namely Bhagvandas Dwarkadas Patel was holding land bearing No. 214 admeasuring H.3.89.62, Block No. 215 ad measuring 5.74.65 and block no. 255 ad measuring 0.64.75 in village Alikherva of Taluka Sankheda, in his name. According to the petitioner, all the said lands were in the scheme of consolidation. These lands were given to the wife of the petitioner by the father of the petitioner and they were transferred in the name of the wife of the petitioner namely Gitaben Jivabhai Patel. That the name of the wife of the petitioner is Gitaben and the name of her father is Jivabhai and the same has continued in the entries in the record. According to the petitioner, his wife is having her relatives and she is having two cousins i.e. sons of her uncle namely respondent No.1 and 2 herein and one Dindas Ramchand, acting as guardian of respondent No.1 and 2. According to the petitioner, the land s.n.214 and other lands which were in the name of his wife Gitaben were managed to be transferred in the names of respondents no.1 and 2 by the said Dindas Ramchand and uncle Chamanbhai. According to the petitioner, the statement of said Gitaben was not recorded by them fraudulently before the revenue authorities. Said Gitaben had no right to transfer the said lands. In view of these facts, the Deputy Collector, Chhota Udepur issued notice to show cause to the petitioner as well as the respondents on 17.2.1987 in respect of all the three blocks as aforesaid and it was directed to show cause as to why the transfer should not be held as void as per section 9(1) of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and thereafter, the Deputy Collector, by order dated 14.8.1987, held the transfer qua block No. 214 was void as per section 9(1) of the Act and imposed fine of Rs.125.00 on the vendor and directed to remove the purchaser under section 9(3) of the Act. This order dated 14.8.1987 was challenged by the respondents no.1 and 2 before the Additional Chief Secretary (Appeals) Revenue Department by filing Revision Application No. 22 of 1988 wherein the Additional Chief Secretary (Appeals) by his order dated 30th August, 1988 allowed the revision application and quashed the order of the Deputy Collector dated 14.8.87 and remanded the matter to the Deputy Collector for making inquiry as regards family partition and to take fresh decision after affording sufficient opportunity to the parties to produce evidence. After

the order of remand made by the Additional Chief Secretary (Appeals), show cause notice was issued to the parties to produce on record Pedigree of the joint family after obtaining the same from the talati cum mantri. Thereafter, by order dated 25.7.89 (page 31-Annexure "F"), the Deputy Collector, Chhota Udepur confirmed his earlier order dated 14.8.87 and again revision application was preferred by the respondents before the Additional Chief Secretary (Appeals) bearing No. SRD.18/89 and the Additional Chief Secretary (Appeals) by his order dated 30.1.1990 confirmed the earlier order of imposition of fine made by the Deputy Collector and also directed that the unauthorized occupation of the respondents no.1 and 2 will be removed and as regards other blocks excpeting block no. 215 and 255, order of the Deputy Collector has been set aside which is under challenge in this petition.

In this petition, affidavit in reply has been filed by the respondents no.1 and 2 and rejoinder thereto has been filed by the petitioner.

I have heard the learned advocates for the parties. Looking to the order passed by the Deputy Collector dated 14.8.1987, it appears that it is relating to block no. 214 only though the show cause notice dated 17th February, 1987 was issued by the Deputy Collector in respect of all the blocks namely block no. 214, 215 and 255. The Deputy Collector, Chhota Udepur considered all the three blocks and recorded the conclusion that the scheme of consolidation was violated in respect of block no. 214 alone and as regards rest of the blocks, the breach of the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 was not found by the Deputy Collector in his order dated 14.8.1987. Thereafter, said order was set aside in the earlier revision preferred by the respondent no.1 and 2 and the matter was thereby remanded to the Deputy Collector for giving fresh decision after considering the evidence produced by the parties on the issue of family partition. After the remand order made by the revisional authority, the Deputy Collector confirmed the earlier order dated 14.8.1987 by order dated 25.7.1989. Thereafter, in the second revision application preferred by the respondents no.1 and 2 before the Additional Chief Secretary (Appeals) and the Additional Chief Secretary (Appeals) by his order dated 30.1.1990, has considered rest of the two blocks namely block no. 215 and 255 but no discussion about how the the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 were violated as regards said two blocks.

However, the Additional Chief Secretary has also observed that there is dispute about civil rights between the parties for which the civil forum is the proper forum and, therefore, in view of this background, and considering the consensus given by the learned advocate Shri J.M. Patel and Shri P.C. Master appearing for the parties, as per my opinion, best course is to remand the matter to the Deputy Collector, Chhota Udepur to examine the dispute between the parties and to pass appropriate orders within some reasonable period.

In the result, petition is allowed. Order dated 25.7.1989 passed by the Deputy Collector (page 31) as well as the order passed by the Additional Chief Secretary (Appeals) Revenue Department dated 30.1.1990 (page 33) are hereby quashed and set aside with a direction to the Deputy Collector, Chhota Udepur to examine the dispute raised by the parties in accordance with the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and to adjudicate that issue within the period of two months from the date of receipt of the certified copy of the said order. Parties will be at liberty to produce before the Deputy Collector, Chhota Udepur all evidence available and to take all contentions available in law and it is directed to the Deputy Collector, Chhota Udepur to consider all such evidence and the contentions that may be raised by the parties and to pass appropriate orders in accordance with law within the period of two months from the date of receipt of certified copy of this order. With these observations and directions, present petition is disposed of. Rule is made absolute in terms indicated hereinabove. There shall be no order as to costs.

20.9.2001. (H.K. Rathod,J.)

Vyas